

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7038 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NAVI MONGNI JKUTH SEVA CO-OPERATIVE SOCIETY LTD,

Versus

GANIBHAI M.DAKORA

Appearance:

MR DM THAKKAR for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/07/97

ORAL JUDGMENT

#. Heard learned counsel for the parties.

#. The petitioner, a registered cooperative society, by way of this Special Civil Application is challenging the order dated 7.5.94 of the Labour Court, Rajkot, passed in Recovery Application No.108 of 1992.

#. The facts of the case, in brief are that the respondent No.1 was the employee of the petitioner-society and he was relieved from service on completion of seasonal work. Taking it to be a case of termination of services, the respondent No.1 raised an industrial dispute which was referred by the State Government to the Labour Court, Rajkot, where it was registered as Ref. LCR No.849 of 1983. The Labour Court has decided the reference in favour of respondent No.1 and instead of reinstatement and full backwages, the respondent No.1 was given compensation of Rs.20,750/-. The Labour Court has passed the Award on 3rd December 1991. This Award was not complied by the petitioner and as such, the respondent No.1 filed an application under Section 33(c)(i) of the Industrial Disputes Act, which was registered as Recovery Application No.108 of 1992. It is case of respondent No.1 that in the Recovery Application an order was made by the Labour Court on 9.3.93 for recovery of the amount. The petitioner filed Lavad Suit No.313 of 1992 against respondent No.1 before the Board of Registrar's Nominee, Rajkot, for recovery of Rs.31,634/- with interest from respondent No.1. It is case of the petitioner that the aforesaid amount has been misappropriated by respondent No.1. In the suit aforesaid, the petitioner filed an application under Order 38 Rule 5 of the Civil Procedure Code for attachment before Judgment. The Board of Registrar's Nominee at Rajkot passed an order on 18th April 1994 under which the respondents were directed to maintain status-quo in respect of recovery of amount of Rs.20,750/-. The respondent No.1 has made a complaint against this order before the Labour Court and under the impugned order, the Labour Court has stayed the order of the Board of Registrar's Nominee in Lavad Case No.313 of 1993 for attachment before Judgment. Hence this Special Civil Application.

#. The learned counsel for the petitioner contended that the Labour Court has no jurisdiction whatsoever to stay the order passed by the Board of Registrar's Nominee, Rajkot in Lavad Case No.313 of 1994. It has next been contended that the amount of Rs.31,634/- was the amount for which suit has been filed by the petitioner against respondent No.1 and as such the order before attachment has also been passed. This is the amount of society which has been misappropriated by respondent No.1 and as such, the Labour Court could not have stayed the order of passed by the Board of Registrar's Nominee, Rajkot, in Lavad Case for attachment of aforesaid awarded by the Labour Court.

#. I do not find any substance in the Special Civil Application. However, I do not consider it necessary to express any opinion on merits of the matter as in the petition filed under Article 226 of the Constitution of India, the conduct of the petitioner is very much important and relevant. This Court can protect, under Article 226 of the Constitution of India, only those litigants who come before this Court with clean hands. The conduct of the litigant should be free from any doubt. This Court cannot be oblivious of the fact that in the Labour Court, in Reference made at the instance of respondent No.1, the petitioner has not lodged its claim of Rs.31,634/-, which is stated to be the amount misappropriated by respondent No.1. This amount of Rs.30,000/- and odd pertains to the period earlier to the termination of services of respondent No.1. It is not in dispute that the services of respondent No.1 were terminated on 2.1.81. The petitioner has not chosen to file any suit for recovery of this amount for all these years and only when the Award of the Labour Court was put in execution and the order has been made for recovery of the same, the petitioner has chosen to file the Lavad suit. So this suit has been filed after more than 13 years of the alleged misappropriation of the said amount by respondent No.1. However, the matter is sub-judice before the Board of Registrar's Nominee, Rajkot and it will decide the matter on merits, but I fail to see any justification in the order of the Board of Registrar's Nominee, Rajkot for attachment of the amount of Rs.20,750/-. The amount of compensation has been awarded to the respondent No.1 by Labour Court in lieu of reinstatement and backwages. Moreover, the order of the Labour Court is only an exparte order and the petitioner, instead of filing Special Civil Application, should have approached to the Labour Court with all its defence and grounds against the order. That has also not been done. So this writ petition is otherwise also pre-mature. This writ petition is also wholly misconceived. It is a case where the petitioner has permitted the things to go leisurely and had filed suit against respondent No.1 only after thirteen years of his termination of services. In such matter when a contested Award has been made in favour of respondent No.1, the payment of the same cannot be allowed to be taken away from respondent No.1 by the petitioner who was party to the Award circuitously, i.e. to say what the petitioners could not do directly wanted to do indirectly by filing a different case. This Court will not permit the petitioner to avoid execution of Award of the Labour Court in such way. It is not the case of the petitioner that the Award passed by the Labour Court has been stayed by any competent Court.

Even if some substance is there in the contention of the petitioner, it is not obligatory on the part of this Court to interfere under Article 226 of the Constitution of India. It is a settled law that a writ of Certiorari is not available as a matter of course or right. Exercise of jurisdiction of this Court under Article 226 of the Constitution is discretionary. Even if the order of the Labour Court is challenged on the ground of lack of jurisdiction that that contention may have some substance, but there being no failure of justice to the petitioner, exercise of jurisdiction under Article 226 of the Constitution is not warranted. As stated earlier, the Lavad case has been filed after about thirteen years and as such it cannot be said that there will be any failure of justice in the present case, in case this Court refuses to interfere in the matter. Reference in this respect may have to the two decisions of the Hon'ble Supreme Court in the case of A.M. Allison v. B.L. Sen, reported in AIR 1957 SC 227 and in the case of Balvant Rai v. M.N. Nagrashna, reported in AIR 1960 SC 407.

#. In the Lavad case the liability to pay the amount by respondent No.1 has yet to be adjudicated whereas the Award of the Labour Court has been made in favour of respondent No.1 after notice to the petitioner. So there are two proceedings; in the first proceedings, the claim of respondent No.1 has been accepted after notice to the petitioner and adjudication thereof and under the second proceedings, the liability of respondent No.1 has yet to be adjudicated.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. The petitioner is directed to pay Rs.1,000/- by way of costs of this petition to respondent No.1

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